

Serial No. 10/801,273

Amend. In Resp. to Off. Act. Of Dec. 8, 2008

UTILITY PATENT

B&D No. JK01488A

REMARKS

Applicants have amended Claim 1. Currently in the above-identified application are Claims 1-7 and 34-35.

The Examiner objected to the drawings under 37 CFR § 1.83(a) for not showing the lowermost portion being below the motor and above the arbor. Applicants note that FIG. 6, which was amended on February 12, 2008, shows portion 644P as being both below the motor and above the arbor. (Whether portion 644P constitutes the claimed "lowermost portion" is further discussed below.) Accordingly, no further changes are needed.

The Examiner rejected Claims 1-7 and 34-35 under 35 USC § 112, second paragraph, as being indefinite. In particular, the Examiner is questioning how portion 644P is the "closest part of the gear housing relative to the support surface when it clearly is shown in Figure 6 that there are parts of the gear housing below the arbor that are closer to the support surface."

It appears that the Examiner is questioning the phrase "the lowermost portion being the portion of the gear housing directly below the motor shaft closest to the support surface." In other words, a possible confusion could exist as to the phrase "lowermost portion" in that the defined portion is not the lowermost portion of the entire gear housing. However, Applicants are effectively being their own lexicographer and attempting to define the claimed "lowermost" portion of the gear housing to be that portion right below the motor shaft. See MPEP § 2173.05(a). While there may be other areas of the gear housing that are lower, these are not the lowest portion of the gear housing right below the motor shaft as claimed.¹

¹ Applicants refer the Examiner to MPEP § 2173.02, which requires the claim language:

Serial No. 10/801,273

Amend. In Resp. to Off. Act. Of Dec. 8, 2008

UTILITY PATENT

B&D No. JK01488A

Similarly, the Examiner indicated that "it is not understood how the portion of the gear housing directly below the motor shaft can always be the closest part of the gear housing to the support surface" due to the different chopping positions. In response, Applicants have amended Claim 1 to denote the claimed arrangement occurs at least when the cutting assembly is in the lowered position, removing the effect of the movement range.

The Examiner rejected Claims 1, 4 and 6-7 under 35 USC § 103(a) as being unpatentable over US Patent No. 5,357,834 ("Ito") in view of US Patent No. 5,850,698 ("Hurn"). The Examiner also rejected Claims 2-3 and 34-36 under 35 USC § 103(a) as being unpatentable over Ito in view of Hurn, and further in view of US Patent No. 3,611,859 ("Avakian") or US Patent No. 2,925,104 ("Allemanann"). In addition, the Examiner rejected Claim 5 under 35 USC § 103(a) as being unpatentable over Ito and Hurn, and further in view of US Patent No. 6,615,701 ("Hollinger"). Reconsideration and withdrawal of these rejections are respectfully requested.

Applicants note that Ito, Hurn, Avakian and Hollinger, whether individually or in combination, do not show a lowermost portion of the gear housing directly underneath the motor shaft that is higher than the arbor. The Examiner argues that such lowermost portion can be a portion of Ito's gear housing when the cutting assembly is in the raised position of FIG. 1.

to define the patentable subject matter with a reasonable degree of particularity... Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement.

MPEP § 2173.02 (emphasis in original).

Accordingly, if the Examiner can suggest better language to define portion 644P, Applicants

Serial No. 10/801,273

Amend. In Resp. to Off. Act. Of Dec. 8, 2008

UTILITY PATENT

B&D No. JK01488A

However, such portion is not the lowermost portion. Claim 1, as amended, defines the lowermost portion as being "the portion of the gear housing directly below the motor shaft closest to the support surface when the cutting assembly is in the lowered position."

Accordingly, the Ito portion proposed by the Examiner cannot be the claimed portion as the proposed portion is found when "the device is pivoted upwards (as in Figure 1)," i.e., when the cutting assembly is in the raised position.

When Ito is in the lowered position, the resulting arrangement is shown in Ito's FIGS. 2-3. Certainly, Ito's FIG 3 shows portions directly below motor shaft 42a. *See, e.g.*, the portions above reference numerals 33, 39 and 39a in Ito's FIG. 3. However, those portions are below the arbor 33.

By contradistinction, Claim 1 calls for the "outer lowermost exposed gear housing portion [being] higher than the arbor." Such arrangement allows for increased cutting capacity, allowing a user to cut bigger or taller workpieces without increasing the blade size. Because the cited references do not show, teach or suggest such arrangement, they cannot render unpatentable Claim 1 and its dependent claims.

would welcome such suggestions.

Serial No. 10/801,273

Amend. In Resp. to Off. Act. Of Dec. 8, 2008

UTILITY PATENT

B&D No. JK01488A

In view of the foregoing, all the claims are patentable and the application is believed to be in condition for formal allowance. Reconsideration of the application and allowance of Claims 1-7 and 34-35 are respectfully requested.

No fees are believed due. The Commissioner is authorized to charge payment of any fees due in processing this response, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,



Adan Ayala, Reg. No. 38,373
Attorney for Applicants
(410) 716-2368